

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

In re Applications of	)	MM Docket No. 93-94
Scripps Howard Broadcasting Company	)	FCC File No. BRCT-910603KX
For Renewal of License of Station WMAR-TV, Baltimore, Maryland	)	
and	)	
Four Jacks Broadcasting, Inc.	)	FCC File No. BPCT-910903KE
For a Construction Permit	)	
For a New Television Facility on Channel 2 in Baltimore, Maryland	)	

DEC 9 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

TO: The Honorable Richard L. Sippel  
Presiding Administrative Law Judge

MOTION TO ENLARGE ISSUES AND  
TO REOPEN THE RECORD

Scripps Howard Broadcasting Company ("Scripps Howard"), licensee of Station WMAR-TV, Baltimore, Maryland, and an applicant in the above-referenced proceeding, through counsel, hereby requests the limited reopening of the record and the addition of a misrepresentation and lack of candor issue against Four Jacks Broadcasting, Inc. ("Four Jacks").

1. Addition of the issue is warranted to permit examination of the irreconcilable inconsistencies between (1) the integration promises of the Four Jacks principals as repeatedly expressed in their application and in written and oral testimony, and (2)

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statements made in an amended Registration Statement filed on December 2, 1993 and a revised Prospectus filed December 6, 1993 by these same persons with the Securities and Exchange Commission ("SEC"), see Amendment No. 5 to Form S-1 of Sinclair Broadcast Group, Inc. ("December 2 Registration Statement") & Sinclair Broadcast Group Prospectus, filed December 6, 1993 ("December 6 Prospectus").<sup>1</sup> Good cause exists for the acceptance of this motion to enlarge issues and for a limited reopening of the record to adduce additional evidence thereon at this time; the motion is based on new evidence that was only revealed on and after December 2, 1993, and the issue is one of potentially decisional significance. See Frank Digesu, Sr., 7 F.C.C. Rcd 5459 (1992); Omaha TV 15, Inc., 4 F.C.C. Rcd 730, 730-731 ¶ 6 (1988).

2. Each of the three Four Jacks principals seeking integration credit--David Smith, Robert Smith, and Frederick Smith--stated under oath in his direct testimony:

In the event of a grant of Four Jacks' application, to fulfill my integration commitment, I will resign from my then-current employment and will limit or terminate any other activities that might interfere with my integration commitment.

See Four Jacks Exhibit 2 at 1, Exhibit 3 at 1, & Exhibit 4 at 1.

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<sup>1</sup> Relevant pages of the December 2 Registration Statement and the entire December 6 Prospectus have been submitted for inclusion in the record with a separate "Motion to Reopen the Record for the Receipt of New Evidence Relevant to Integration" that is being filed simultaneously with the instant motion.

3. This direct case testimony was exchanged on September 13, 1993 and admitted into evidence at the Admissions Session held October 5 & 6, 1993. The same representations were made earlier in the original Four Jacks application filed September 3, 1991 at Exhibit 6, 4-5, and in the Four Jacks Integration and Diversification Statement filed May 7, 1993.

4. During cross-examination, Frederick Smith described his own current employment and the employment of the other two proposed integrated Four Jacks principals as follows:

Q: And you are, as you've told us, employed by Sinclair Broadcast Group, Inc.

A: Correct.

Q: That's your employment, right?

A: Correct.

Q: Okay, and you're employed there as are your brothers David, Robert -- and Robert, is that correct? Robert and Fred.

A: Correct.

Hearing Transcript, Volume 12 at 1371.<sup>2</sup>

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<sup>2</sup> Robert Smith's testimony on cross-examination likewise demonstrates plainly that he considers his present employment to be his status as an officer of Sinclair:

Q: What is your present employment?

A: My present employment? I'm the vice-president and treasurer of Sinclair Broadcast Group, Inc.

Hearing Transcript, Volume 11 at 1239.

5. Contemporaneously with these representations to the Federal Communications Commission ("FCC"), the Four Jacks integrated principals, in their capacity as officers of Sinclair Broadcast Group, Inc., filed with the SEC a Registration Statement associated with that company's proposed offering to the public of first \$100 million, then \$200 million, in promissory notes.<sup>3</sup> These SEC filings all confirm that the Four Jacks integrated principals are employees of Sinclair who each draw a six-figure "[s]alary" (plus receiving shares of a recent \$10 million bonus) for the "services" they render as "executive officers" of that company. See, e.g., Scripps Howard Exhibit 31 at 57 & December 6 Prospectus at 58.

6. Whether the Four Jacks integrated principals would continue their current employment with Sinclair is an issue of importance in the debt offering. The SEC filings identify as a "risk factor" for investors that the "loss of services of any of the present officers, especially its President and Chief Executive Officer, David D. Smith, may have a material adverse effect on the operations of the Company." See Scripps Howard Exhibit 31 at 17 and Prospectus at 19.

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<sup>3</sup> The original filing, made September 28, 1993 is in the record as Scripps Howard Exhibit 26. The latest revision to this filing as of the close of the record was filed at the SEC on November 9, 1993 and is in the record as Scripps Howard Exhibit 31. The final pre-effective amendment was the December 2 Registration Statement, selected pages of which are being offered into evidence simultaneously with the filing of this motion. See n.1, supra. Finally, a post-effective-date amended Prospectus was filed on December 6, 1993, and it is also being offered for inclusion in the record. Id.

7. Until the December 2 filing, however, the SEC documents lacked any notice to potential investors that David Smith and two of the other three Sinclair executive officers who were identified to the SEC and investors as "key personnel" would be obligated to work full-time as integrated managers of Four Jacks if their Channel 2 application were granted. Compare Scripps Howard Exhibit 31 at 17 with December 2 Registration Statement at 18-19. In addition, until the post-effective-date December 6 filing, the SEC documents made no reference to the promise made to the FCC by these proposed integrated principals to "resign [their] then-current employment." See December 6 Prospectus at 19.

8. When these matters were finally addressed in the SEC filings, the representations made to investors directly contradict the integration pledges made in this proceeding. In the December 2 Registration Statement, Sinclair disclosed the following additional information to potential investors:

In addition, each of David D. Smith, Robert E. Smith and Frederick G. Smith, executive officers of the Company, has made certain commitments in the application filed with the FCC by Four Jacks, including the commitment to work on a full-time basis (40 hours or more per week) in the operations of Channel 2 in Baltimore in the event that Four Jacks is awarded such channel by the FCC. However, David D. Smith has informed the Company that in neither the application nor the FCC proceeding with respect to Four Jacks has he committed to resign his official positions with, or dispose of his ownership interests in, the Company in the event that Four Jacks is awarded such channel by the FCC. Moreover, the Company believes that each of David D. Smith, Robert E. Smith and Frederick G. Smith will be able to perform all of his current

duties with the Company while fulfilling his commitment to work for Channel 2.

December 2 Registration Statement at 19 (emphasis added).

In the December 6 Prospectus, Sinclair disclosed the following additional information:

In addition, each of David D. Smith, Robert E. Smith and Frederick G. Smith, executive officers of the Company, has made certain commitments in the application filed with the FCC by Four Jacks, including the commitment to work on a full-time basis (40 hours or more per week) in the operations of Channel 2 in Baltimore in the event that Four Jacks is awarded such channel by the FCC. In the FCC application, David D. Smith, Robert E. Smith and Frederick G. Smith further stated that each of them would resign from their then-current employment and limit or terminate any other activities that might interfere with their commitments to Four Jacks. The Company does not believe that such commitment of resignation requires them to resign as officers or directors of the Company or to dispose of their ownership interests in the Company. Further, the Company has been informed by its FCC regulatory counsel and each of these officers that in neither the application nor the FCC proceeding with respect to Four Jacks has any of these officers committed to resign his official positions with, or dispose of his ownership interests in, the Company in the event that Four Jacks is awarded such channel by the FCC. Moreover, the Company believes that each of David D. Smith, Robert E. Smith and Frederick G. Smith will be able to perform all of his current duties with the Company while fulfilling his commitment to work for Channel 2.

9. Contrary to the view expressed by FCC regulatory counsel and the three Sinclair officers in the above-quoted language, these new representations to investors in the SEC registration statements directly contradict the integration pledges that were repeatedly

made to the FCC.<sup>4</sup> Four Jacks' three integrated principals promised in their application, in their written testimony, and in their oral testimony (discussed further below) to resign their "then-current employment" in order to undertake their full-time management responsibilities at Channel 2.

10. Any doubt that all the Four Jacks officers are now "full-time" employees of Sinclair is removed by their own words. In addition to the testimony previously cited herein, Frederick Smith, for example, has described himself as "joining the Company full time in 1990." See December 6 Prospectus at 57 (emphasis added). Frederick Smith's direct case written testimony makes the same point about his full-time employment at Sinclair. See Four Jacks Exhibit 4 at 3 ("On July 1, 1991, I assumed a full-time executive position with the family television business.") Further, each of the integrated Four Jacks principals testified that their office hours at Sinclair are approximately 9:00 a.m. to 5:00 p.m. See Transcript Volume 11 at 1142-44 (David Smith's office hours); Volume 11 at 1244 (Robert Smith's office hours); Volume 12 at 1296 & 1298 (Frederick Smith's office hours). During that time in the office the testimony reveals that they handle matters on an as-needed basis and that predicting what a typical day of work would include is not possible. Hearing Transcript, Volume 11 at

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<sup>4</sup> The accuracy and completeness of registration statements filed with the SEC is an extremely serious matter. Section 24 of the Securities Act of 1933 provides a felony-level criminal penalty for making intentionally untrue statements or material omissions in a registration statement. See 15 U.S.C. § 77x.

1243-44; see Volume 11 at 1137; Volume 12 at 1324. Thus their availability as "executive officers" for handling what are unpredictable developments in Sinclair's operations is necessarily a part of their current employment.

11. There is simply no doubt that the three integrated Four Jacks principals' current full-time employment is as "executive officers" of Sinclair Broadcast Group, Inc. There is likewise no doubt that the three integrated Four Jacks principals promised the FCC repeatedly that they would resign any such continuing employment if they should acquire Channel 2.

12. Finally, the testimony of Four Jacks' president on cross-examination confirms the occurrence of deliberate misrepresentation and lack of candor with respect to whether he would resign his employment at Sinclair. David Smith's testimony on cross-examination both identified his positions at Sinclair and restated his intention to "resign from [his] then-current employment." See Hearing Transcript, Volume 11 at 1073-74. When asked why the SEC documents then on file did not disclose his pledge "to terminate his then-current employment," David Smith could have explained that he did not intend to quit Sinclair. Instead, he responded dissemblingly as follows:

Q: Isn't it a fact that nowhere in Exhibit 26, the S.E.C. filing they distribute to the public for investment purposes, is there any reference to your pledge to divest yourself -- to terminate your then-current employment or divest yourself of any activities that might interfere with your integration commitment in this proceeding?



A: If there is a reference, I think the reference is as required on Page 17 of the document and it's a reference that you've already referenced which is Control by Stockholders; Dependence Upon Key Personnel. I think the document fairly, clearly says that the company may be dependent. That's why it's disclosed. In the event that I leave the company as a result of being successful with Four Jacks, the public has been advised.

Q: What language do you see that says the public has been advised that you're going to leave if Four Jacks is successful?

A: I read that document to suggest and make clear to the public that in the event that I am not there as a key personnel or that other people as key personnel aren't there, they're so advised and the success or failure of the company may or may not happen.

Hearing Transcript, Volume 11 at 1096-97. Mr. Smith's lack of candor directly before the tribunal about his intent not to resign from Sinclair is plainly demonstrated here.

13. Accordingly, Scripps Howard asks that the following issue be added in this proceeding and that the record be reopened for adducing evidence thereon:

To determine whether the proposed integrated principals of Four Jacks Broadcasting, Inc., David Smith, Robert Smith and Frederick Smith, made misrepresentations or lacked candor before the Commission in promising to resign their then-current employment as part of their integration commitment.

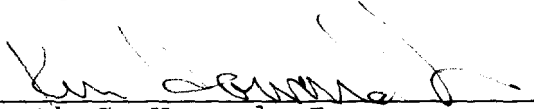
Scripps Howard asks further that because the facts regarding this issue are all within the peculiar knowledge of Four Jacks and its principals and counsel, the burden of proceeding with the evidence

and the burden of proof on this issue should rest upon them. See Heidi Damsky, 8 F.C.C. Rcd 6242, 6244 & 45 (Rev. Bd. 1993).

WHEREFORE, Scripps Howard requests that its "Motion to Enlarge Issues and to Reopen the Record" be granted.

Respectfully submitted,

SCRIPPS HOWARD BROADCASTING  
COMPANY

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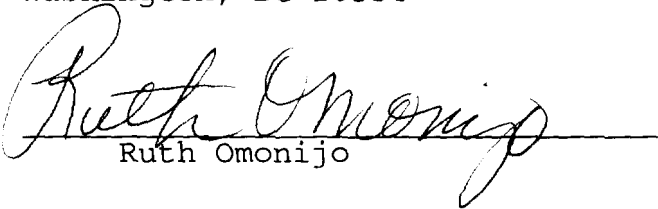
CERTIFICATE OF SERVICE

I, Ruth Omonijo, a secretary in the law offices of Baker & Hostetler, here certify that I have caused copies of the foregoing "Motion to Enlarge Issues and to Reopen the Record" to be sent via United States First Class Mail, postage prepaid, on this 9th day of December, 1993, to the following:

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